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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,205	12/12/2003	Vinh T. Vu	6736-000014	1796

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EXAMINER

HEPPERLE, STEPHEN M

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/735,205	Applicant(s) VU ET AL.	
	Examiner Stephen M. Hepperle	Art Unit 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/14/05, 12/12/03</u> . | 6) <input type="checkbox"/> Other: ____. |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Breda

(6,325,089) Breda shows a pressure balancer 100 inside a cartridge 16 that is rotated to control flow. The cartridge has inlet ports 96, 98, and outlet ports 173, 174 in the bottom piece 184 (which also rotates with the cartridge). The outer housing 12 has inlet ports 32, 34, which are shown as blocked in Fig. 4 by cartridge 16. Cup 14, seen as the second valve element, has tapered second ports 64, 66, so that rotation of the pressure balancer cartridge can vary flow. Regarding claim 11, note bonnet 216 (Fig. 2) held in by ring 50. Of course, the overall valve would be expected to have an outer bonnet using threads 30. The base of cup 14 with its tapered outlets, provides the recited valve element of claims 11-15 and 17. Regarding claims 3, 9, 16, note seal rings 78 (Fig. 2) in cup 14, which is between housing 12 and the pressure balancer cartridge 16. The rings are stationary. Note that the pressure balancer is of the diaphragm type.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-8, and 10 are alternatively rejected under 35 U.S.C. 103(a) as obvious over Breda (6,325,089). In this rejection, the cylindrical portion of cup 14 is seen as the first valve

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element, having inlet port 72, 73, sealed with o-rings 78. The outer housing 12 has inlet ports 32, 34 which are shown as blocked in Fig. 4 by cartridge 16. The base of cup 14, seen as the second valve element, has tapered second ports 64, 66, so that rotation of the pressure balancer cartridge can vary flow. The claims recite a first and second valve element rotatably fixed to one another, which would form a unitary construction as shown by Breda by cup 14. It would have been obvious to form the Breda cup 14 of two parts, a cylinder and a disk, assembled together so that each individual part would be easier to form.

Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other Breda patents and Dempsey show similar valves, where a cartridge having a pressure balancer inside, is rotated between a first and second valve interface to control flow. Dempsey has a tapered cartridge outlet 90.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Hepperle whose telephone number is 571-272-4913. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on 571-272-4930. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Stephen Hepperle", with a stylized flourish at the end.

Stephen M. Hepperle
Primary Examiner
Art Unit 3753

SMH